

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentee : Bihua LIU
U.S. Patent No. : 7,572,126
Issued : August 11, 2009
For : FLOWING COLORS OIL PAINTING

Law Offices of Albert Wai-Kit Chan, PLLC
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Whitestone, New York 11357

May 28, 2010

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO APRIL 30, 2010 DECISION ON REQUEST FOR
RECONSIDERATION OF PATENT TERM ADJUSTMENT**

This communication is submitted in response to the Decision on Request for Reconsideration of Patent Term Adjustment issued by the United States Patent and Trademark Office (USPTO) on April 30, 2010 in connection with the above-identified patent. Patentee is given one (1) month or thirty (30) days, whichever is longer, from the mailing date of the Decision to respond; namely, by May 31, 2010. Accordingly, this communication is being timely filed.

A petition was filed on August 21, 2009 requesting a patent term adjustment of one thousand four hundred and thirty-eight (1438) days. The April 30, 2010 Decision issued by USPTO granted a patent term adjustment of one thousand two hundred and twenty-

Applicant : Bihua LIU.	Atty. Dkt. No. :	1365-US
USSN : 10/634,526	Art Unit :	3725
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nine (1229) days. A Copy of the April 30, 2010 Decision is enclosed as **Exhibit A** (5 pages).

USPTO Delay Under 37 CFR §1.702(a)(4)

In the August 21, 2009 petition, Applicant cited a USPTO Delay Under 37 CFR §1.702(a)(4) because the Office had failed to Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is four months after the date on which the issue fee was paid (i.e. January 8, 2006) and ending on the date the patent was issued (i.e. August 11, 2009), totaling **1311** days. However, the April 30, 2010 Decision indicates that a Notice of Withdrawal from Issue was mailed on June 20, 2007, and that the Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. §154.

Applicant submits that the Office took more than twenty-one (21) months from the date the issue fee was paid (September 8, 2005) to issue a Notice of Withdrawal from Issue. According to the logic of the Decision, the Office could have taken any amount of time to issue a Notice of Withdrawal from Issue without having to compensate the Applicant with any patent term adjustment as long as the Notice is mailed by the date that is three years after the application filing date. This kind of delay is clearly a mistake of the Office, and is similar to the delay when the Office takes more than four months to issue an action after a reply under §1.111 has been filed. Therefore, Applicant submits that a period of adjustment of patent term due to examination delay

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starts from the day after the date that is four months after the date on which the issue fee was paid (i.e. January 8, 2006) and ending on the date that is three years after the application filing date (August 5, 2006), totaling 212 days.

In view of the above discussion and calculation, Applicant respectfully requests that a patent term adjustment of 212 days be added to the 1229 days of patent term adjustment already granted pursuant to the April 30, 2010 Decision.

If a telephone interview would be of assistance in rectifying the patent term adjustment of the above-identified patent, Applicant's undersigned attorney may be contacted at the number provided below. No fee is deemed necessary in connection with the filing of this request. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,
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